

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5148 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THE NEW INDIA ASSURANCE CO. LTD.

Versus

DAHYABEN JAYANTILAL PANCHAL

Appearance:

MR RAJNI H MEHTA for Appellant

MR DN TRIVEDI for Respondents No. 1 to 4

None present for Respondent No. 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/07/98

ORAL JUDGEMENT

1. This appeal under section 173 of the Motor Vehicles Act, 1988 is directed against the judgment dated 20th October, 1997 passed by the Motor Accidents Claim Tribunal (Main) Ahmedabad (Rural) at Ahmedabad on Ex.5 in M.A.C.P. No.337 of 1996 under which the claimants-respondents NO. 1 to 4 were awarded Rs.50,000/- by way of interim award.

2. Learned counsel for the appellant contended that the claimants have come up with four versions of the accident and as such the insurance company could not have been made liable for the payment of the amount of interim compensation awarded to the claimants. It has next been contended that the jeep which is insured by the appellant has been introduced in the accident by amending the versions of accident from time to time only with the object to get the compensation and particularly interim compensation from the insurance company.

3. On the other hand, the counsel for the claimants contended that this appeal is against an interlocutory order and in such matters the Tribunal is not required to decide at this stage the matter finally. On the niceties of legal questions or questions of fact it is not required to deal with the same on merits but Tribunal has to prima-facie satisfy that the accident is as a result of negligent driving of the vehicle involved in the accident by its driver. On the basis of the material which has come on record, the Tribunal has recorded a satisfaction and as such it has not committed any error in awarding the amount of Rs.50,000/- as interim compensation to the claimants-respondents.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. From the judgment of the Tribunal I find that the appellant has not produced on the record of the claim case the report of the investigator appointed by it. On the basis of complaint filed before learned J.M.F.C. Sayala, police after completing the investigation has chargesheeted Harjibhai Chimanlal Panchal for the accident in question under sections 304A, 279, 337, 338 of I.P.C. and under section 177 and 184 of M.V. Act. Harjibhai Chimanlal Panchal is the driver of the jeep. The Tribunal has not committed any illegality in holding prima-facie on the basis of the chargesheet at this stage that the jeep was involved in the accident. For the purpose of recording prima-facie satisfaction this evidence cannot be stated to be altogether irrelevant and not admissible. Much emphasis has been laid by the learned counsel for the appellant that once this amount is awarded it is not refundable. It is true that the liability under section 140 of the M.V. Act, 1988 is based on the principle of "no fault liability" and even if ultimately the negligence of the driver in driving of the vehicle is not proved or for other reasons the driver or owner is exonerated, the amount paid by way of interim

compensation cannot be recovered from the claimants but this principle may not be applicable to the cases where the insurance company made good of the liability of the owner of the vehicle and cannot realise this amount ultimately on their exoneration from the liability. The insurance company in fact insured the liability of the owners and ultimately he is exonerated then certainly at that point of time the Tribunal can pass appropriate order directing the owner of the vehicle to refund this amount together with interest, costs etc. to the company or otherwise the insurance company is within its competence to file a civil suit to recover this amount from the owner. However, only on these technical pleas the benevolent provisions as contained in section 140 of the M.V. Act, 1988 cannot be allowed to be frustrated by the Courts at the hands of the insurance company. The purpose and object of section 140 of M.V. Act is to provide immediate financial help to the claimants in the case of death and injured in the case of injury in motor accident.

6. Then the learned counsel for the appellant contended that in case ultimately the insurance company succeeds then it is difficult to realize this amount from the owner of the vehicle. I do not find any merits in this contention also as it is a hypothetical contention without there being any factual and legal foundation for the same. I do not find any merits in this appeal which calls for interference of this Court.

7. In the result, this appeal fails and the same is dismissed. However, it is hereby ordered that the M.A.C.T. (Main) Ahmedabad (Rural) at Ahmedabad, after depositing this amount by the insurance company, shall consider the question of disbursement of this amount taking into consideration the fact that three claimants are minor and their interests are to be protected. If any amount is deposited by the insurance company, appellant in this appeal, in this Court then the same may be remitted forthwith to the Tribunal. To deposit the deficit amount of the interim award, the appellant is granted one month's time.

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